IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case

C482 No. 444 of 2006

Date of decision:- 22-06-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:- 22-06-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 444 of 2006

Rajkumar S/o Sri Chandra Pal
R/o village Raise, P.S. Laxar
District Haridwar ....Applicants

Versus

1. State of Uttaranchal
   Chandra Pal S/o KUdva
   P.S. Laksar
   District Haridwar ...Respondents

Sri Sanjeev Sing learned counsel for the applicant.
Sri M.S. Tyagi learned counsel for the respondent no. 2.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the entire proceedings as well as the orders dated 24.02.2006 and 16.06.2006 passed by the Judicial Magistrate, Laksar, District Haridwar in complaint case no. 54/2006 Chandrapal Vs. Rajkumar.

2. Brief facts of the case are that the respondent No. 2- Chandra Pal has filed a complaint before the Magistrate on 22.02.2006 against the applicant and one other unknown person. The said complaint was filed under section 379 IPC with regard to the theft of tractor Trolley. The complainant examined himself under section 200 Cr. P.C. Thereafter, the complainant moved an application under section 202 Cr.P.C. with the prayer to send the matter to the police officer for investigation. Vide order dated 24.02.2006 the said application was allowed and Magistrate passed the order that the police would not register the case as provided under section 154 Cr.P.C. He further directed that the accused

would not be arrested without permission of the court. He further directed the police to recover the alleged tractor trolley. Subsequently, an application dated 16.06.2006 was moved by the respondent No. 2 for the superdagi of the said tractor trolley. Vide order dated 16.06.2006 the Magistrate directed the S.H.O., Laksar to take the said trolley into his possession. Feeling aggrieved by both the orders, the present petition has been filed.

3. It was contended on behalf of the applicant that the learned Magistrate has illegally ordered to investigate the matter. It was contended that the magistrate should not have ordered to make the investigation as provided under section 202 Cr.P.C. There is a difference between the 'inquiry' to be held under section 202 Cr.P.C. and the 'investigation' under section 157 Cr.P.C. however he was conscious that the word 'investigation' may cause confusion to the police. He further clarified his order so that the police would not register the case against the present applicant. He further directed the police not to arrest the applicant without permission of the court. It is well settled position of law that Chapter XII of the Code contains provisions relating "information to the police and their powers to investigate", whereas Chapter XV, which contains section 202, deals with provisions relating to the steps which Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within chapter XII deals with powers of the police officers to investigate cognizable offences. True,

section 202, “direct an investigation by a police offer”. But the investigation envisaged in section 202 is different from the investigation contemplated in section 156 of the Code. The various steps to be adopted for investigation under section 156 of the code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as provided in section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. But, a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the code. A reading of section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202 (1)

i.e. “or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceedings.” **{Mohd. Yousuf Vs. Asfaq Jahan (Smt.) & another 2006 (1) SCC (Cri) p/460}**

4. Thus, the order dated 24.02.2006 passed by the magistrate to the above extent does not bear any infirmity. It has been held in **Abhinandan Jha & others Vs. Dinesh Mishra AIR 1968 SC p/117** that there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a chargesheet, when they have sent a report under section 169 Cr.P.C. that there is no case made out for sending up an accused for trial. The functions of the Magistracy and the police are entirely different, and though, a Magistrate may or may not accept the report and take suitable action, according to law, he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

5. The order dated 16.06.2006, by which the magistrate ahs directed the police to seize the tractor trolley during the inquiry, has also been challenged before this Court. During the inquiry the police has only to submit its report with regard to the factual position of the case and the magistrate cannot direct during such investigation to make the investigation in any manner. The Magistrate has exercised his jurisdiction by ordering to seize the tractor trolley without hearing the parties. The magistrate had an option in the application to hear the parties and after recording their evidence the Magistrate should have passed the order and he should

have find out the real owner of the tractor trolley after concluding the said finding he should have directed the S.H.O. to seize the alleged trolley and produce before the court. This act can only be done after the cognizance is taken. The alleged tractor trolley can only be given to any person after the cognizance is taken.

6. In view of the foregoing discussion, I am of the view that the order dated 24.02.2006 was correctly passed by the court below and it does not require any interference in this petition. However, the order dated 16.06.2006 passed by the Magistrate is liable to be quashed. Therefore, the order dated 16.06.2006 is quashed.

7. The petition is partly allowed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 22.06.2006
LSR